

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

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**Nadine Gazzola**, individually, and as co-owner,  
President, and as BATFE Federal Firearms Licensee  
Responsible Person for **Zero Tolerance**  
**Manufacturing, Inc.**; *et al.*

**Civ. No.: 1:22-cv-1134 (BKS/DJS)**

*Plaintiffs*

v.

**KATHLEEN HOCHUL**, in her Official Capacity as  
Governor of the State of New York; *et al.*

*Defendants*

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**DECLARATION OF PLAINTIFF  
ROBERT OWENS – THOUSAND ISLANDS ARMORY**

1. I am Robert Owens and I make this Declaration under penalties of perjury. These statements are true to the best of my knowledge, and are based upon my personal knowledge and experience unless otherwise specified.
2. I oppose all laws complained of in this case. I submit this “Declaration” to highlight certain of my background, credentials, employment, licenses, and relevant experience. I reserve the right to submit such further declarations, testimony, and exhibits as may be necessary to support our claims.
3. Footnotes within this document that provide citation of law are inserted by Counsel. I attest that I am, independent of Counsel and prior to this lawsuit, familiar with such laws, as stated, discussed, and argued herein. Legal citations are being provided as a courtesy to the Court due to the complexity of this case.

4. I am not a “disqualified person,” as this term is defined under 18 U.S.C. §922(g).
5. I am the Sole Proprietor of “Thousand Islands Armory,” a New York business. The business premises is located in the hamlet of La Fargeville (town of Orleans), Jefferson County, New York. Our recent Census population was a little over 500 people. It’s the definition of a close-knit, rural community.
6. I am the “Responsible Person”<sup>1</sup> for a Federal Firearms License, Type-01, Dealer in Firearms.
7. I have also a NYS Sales Tax number for the collection and reporting of sales tax.
8. I have used firearms for more than fifty years, beginning when I was ten years old and I started going hunting with my father.
9. In addition to my business inventory, I also own personal firearms of the types shotgun and rifle.<sup>2</sup>
10. And I have, since 2012, had an unrestricted concealed carry permit issued by Jefferson County. There are no handguns listed on the permit at this time. I do not currently own any handguns. I do, however, have every intention of maintaining this permit.
11. Prior to September 1, 2022, Jefferson County required a pistol permit safety course to apply for a concealed carry permit. I took such a course as part of my application process.

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<sup>1</sup> “Responsible Person” is defined by BATFE on Form 7, “Definitions,” as “In addition to a Sole Proprietor, a Responsible Person is, in the case of a Corporation, Partnership, or Association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and practices of the Corporation, Partnership, or Association, insofar as they pertain to firearms.”

<sup>2</sup> Attorney of Record note: I am not providing the detail level in these public documents as is available from the Co-Plaintiffs in the interest of their personal safety.

12. I do not teach either live-fire or NRA firearms safety courses.
13. **Military Service and Civilian Career, Relevant Credentials.** I am a Veteran of the United States Army, having served for twenty years, from 1983 to 2003. I was honorably discharged. I achieved the rank of CW2 Chief Warrant Officer. I enlisted as a soldier with two years of college and skills as an auto mechanic. I wanted to be in heavy equipment. I went in as an E3 and rose in the armament field, including repairing tanks and heavy artillery. I served overseas in Afghanistan, Kuwait, and Bosnia.
14. After leaving the service in 2003, I worked as a contractor for the Army, as a maintenance logistics specialist, until 2014. My last overseas deployment was in 2007 to Kandahar.
15. I have 31 years of supporting the Army as a soldier and a civilian.
16. **FFL Dealer in Firearms.** I started “Thousand Islands Armory” in 2013 to support the North Country with safe and accurate firearms and parts.
17. I sell long guns and lower receivers in accordance with the parameters of my federal dealer’s license. I do not, for example, have a federal export license. I get quite a few calls and people showing up from Canada who want to visit my shop, but I decline all of that potential business. I observe US government ITAR restrictions.
18. I also sell manufacturer AR firearms parts and accessories, and gun cleaning kits and supplies. I offer sale of trigger locks; locking long gun, hard-side cases; and TSA-compliant long gun, hard-side lockable cases. And I sell ammunition.
19. I previously also sold handguns, but phased that out in 2019.
20. I also have military experience in and retail experience selling “body armor.” I sold off my retail inventory in plates and vests in 2017/2018.

21. I already suffered one decrease in business since approximately 2017 when New Yorkers started appreciably moving their primary residence to other states as a result of arrest-and-release laws and the economy. Then, small businesses took a hit from COVID shut-downs. Now, just as it seemed our local economy was starting to recover, FFLs, myself included, were hit with the Governor's ire through these new laws.
22. I am a one-man operation. I do not have employees. My inventory is secured in one room of my house, which is, itself, secured. The retail and workbench room includes a locked display case where ammunition and parts are stored.
23. I follow strict, self-imposed business operations, including that a new customer is greeted outside. If I am not the right fit for the customer, I do not allow them in. My shop is locked at all times, and I generally allow in only one customer at a time. If they are a couple I know, or siblings, or a parent with child over 12, that sort of thing, I allow both to come in. My shop is small, at just 258 sq. ft.
24. I have the sole responsibility for customer interface and sales, as well as inventory reconciliation. This time of year, every phone call is about black powder and fixing a gun because the breech insert is frozen in the barrel. I never did get into black powder because of the ATF/Fire Department requirements (approved steel building), zoning, and insurance.
25. My primary business is to help people who are building their own firearms. Customers often bring in a firearm build in process and I go through with them what they have done so far, correct mistakes and teach them the correction, and assist them in the completion of an operational rifle.

26. Most people who attempt to build a firearm, build just the one firearm. It is not an easy thing to do or to master, and it is a good exercise to improve a person's knowledge of how the firearm is built to better understand how it works.
27. I sell only what is referred to in the industry as "100% lower receivers" (a/k/a "stripped lowers"). This is a part made by a federally-licensed manufacturer which bears a factory serial number, model, "multi caliber," manufacturer name, and, in the case of a domestic manufacturer also the city and state, all of which is required by federal law.<sup>3</sup> I only stock lower receivers made in the U.S.
- a. I am familiar with the recent ATF "Final Rule,"<sup>4</sup> which set forth the agency's final definition of a "frame or receiver" for mechanical distinctions between an "80% lower receiver" and a "100% lower receiver."
  - b. I do not sell any "80% lower receivers.
  - c. I do not inventory or sell any unmarked lower receivers.
  - d. I was already in compliance with this ATF Final Rule prior to its issuance.
28. I am 65-years old and a partially-disabled Veteran. I'm a mechanical/electrical guy. My work with personal firearms could be characterized as "light maintenance," compared to the range of work I've done on heavy military and mine protective equipment.

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<sup>3</sup> See, 26 U.S.C. §5842(a), "Identification of firearms." See, also, 27 CFR §478.92 for corresponding regulations and 27 CFR §479.102 relative, specifically, to markings for NFA firearms. Further, under 18 U.S.C. §922(k) it is illegal for a firearms dealer to knowingly sell a firearm with a serial number that has been removed, obliterated, or altered.

<sup>4</sup> See ATF "Final Rule 2021R-05F," "Definition of "Frame or Receiver" and identification of Firearms," at <https://www.atf.gov/rules-and-regulations/definition-frame-or-receiver/summary>.

29. **The Impact of the New Laws.** If we do not achieve an immediate Temporary Restraining Order, I will have to close my business on or about December 5, 2022. There is no way I can comply with all of the new laws for gun shops.

**Impending December 5, 2022 Impact:  
Federal Pre-Emption and Fifth Amendment Necessitated TRO**

30. First of all, I am not going to send my ATF records to the NYS Police. These records are created under federal law for federal firearms compliance law purposes. The federal laws and regulations concerning these records are clear and logical, and the laws clearly prohibit the transfer of these records in whole or in part to any third party. Any new law from the Defendants to the contrary is a direct violation of federal law and must be struck down as quickly as possible by the Court.
31. The Defendants are trying to take over the functions of the ATF,<sup>5</sup> but it's double-tasking, redundancy, and a complete lack of proficiency in what the ATF is already doing and doing well.
32. My day-to-day business relationship is with the ATF. I have no working relationship with the Defendant NYS Police, the NYS DCJS, or the NYS Attorney General's Office.
33. Among many other federal requirements, I use the NICS background check system for every purchase of a firearm or 100% lower receiver, as required. The system functions smoothly and quickly. The system is free to use. The ATF "800" number is answered promptly and by employees who provide answers to my questions. I work actively with the ATF to prevent the unlawful sale to a "disqualified person."

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<sup>5</sup> NY Exe §228.

34. In just a few, short months, the Defendants intend to take over the background check system by forcing themselves in between me and the ATF. The Defendants have no demonstrated competency for setting up a firearms and ammunition background checks system.
- a. The NYS Police failed to launch an ammunition background check system under Governor Cuomo as part of the 2013 “SAFE Act.” It was abandoned through a “Memorandum of Understanding” in 2015.<sup>6</sup>
  - b. Another example? CoBIS Ballistics Database passed under Governor Pataki. Another waste of time and money, insufficient and improperly trained personnel to manage, and it never solved a single crime. Repealed in 2012.<sup>7</sup>
35. The only reason the Defendants are even attempting these new laws is because they want a registry of firearms owners and ammunition purchasers. It’s not “the only credible reason.” It’s not me guessing. There is no other reason. Congress prohibited and the ATF has not attempted to do so. Even when the ATF runs a background check, it gets only so much information from me, the dealer, and that information has to be purged from their system in specified time periods, dependent upon the results of the records search.<sup>8</sup>

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<sup>6</sup> “Memorandum of Understanding Regarding the Statewide License and Record Database Utilization for Eligibility to Purchase Ammunition,” signed July 10, 2015 by the Director of State Operations and John J. Flanagan, Temporary President of the New York State Senate. Attached as an Exhibit.

<sup>7</sup> See NYCRR, Tit. 9, Part 472, “Combined Ballistic Identification System Rules,” which was to have taken effect January 1, 2001 under the auspices of the NYS Police. NY Gen Bus Law §396-ff repealed “...to permit the State Police to eliminate CoBIS.” Per the “Statement in Support” of the 201202913 NYS Executive Budget Public Protection and General Government Article VII Legislation” (eff. imm.), “Rather than continue support for this ineffective database, the State will invest in enhanced systems and equipment that will permit local and State crime laboratories to maximize their use of the National Integrated Ballistics Information Network (NIBIN).”

<sup>8</sup> See, e.g., 28 CFR §25.9, “Retention and destruction of records in the system.”

36. The new laws contain no records security, access, retention, or destruction limitations. The new laws will sweep up all the dealer records plus start amassing records of its own, plus giving the Governor and her agencies the power to combine firearms records with other records, for unrestricted use. All of this is either illegal under federal law<sup>9</sup> or contrary to the spirit of federal law or just plain unconstitutional.
37. The NICS background check system may be used only for the single point-of-purchase check of the customer across the counter from me.<sup>10</sup> Period.
38. There are only two federal exceptions: pursuant to a warrant in a “bona fide” criminal case or during a routine inventory reconciliation.<sup>11</sup>
39. The one other scenario is when the ATF or the FBI contacts a dealer, such as myself, for a trace request, the response to which must be made by a dealer within 24-hours.<sup>12</sup>
40. Right now, and for the past so many years, it has been fair to say that there is a good distribution of small gun shops across the rural areas of the North Country.
41. What you get from that distribution of mom-and-pop shops is both solid supply for the citizens of North Country and, also, men and women on the ground who know the people in their communities and who are dedicated to preventing an illegal sale. You can characterize that as “working for” the ATF/FBI, or you can think of it as having the ATF/FBI on call to help us prevent crime in our communities. Either way, you do not

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<sup>9</sup> See, 18 U.S.C. §926 and 28 CFR §25.11.

<sup>10</sup> See, 28 CFR §25.6(a) (“FFLs may initiate a NICS background check only in connection with a proposed firearm transfer as required by the Brady Act.”) and 28 CFR §25.11(2) (penalties for unauthorized use).

<sup>11</sup> See, 18 U.S.C. §923(g)(1)(B).

<sup>12</sup> See, 18 U.S.C. §923(g)(7).



want to drive the entire industry of firearms dealers out of business. It's contrary to public safety and it's an unconstitutional outcome.

42. Think about it in terms of what it would be like if you spent some time at one of our shops. In terms even of picking up a box of ammunition for hunting season, I build, and other small gun store owners build, relationships year-over-year with the people in our communities and extended areas. A sale of a single box of .22 caliber, costing the customer about \$75, can take half an hour to check out as we discuss which ammunition is in short supply this year, the supply chain and the economy, how politics in Albany and Washington are affecting specific manufacturing supplies relating to the industry, who's now old enough to be hunting this year, how so-and-so never sites in his gun properly and that's why he can't get a buck, whether some bad actor bagged a deer without a license. Conversations are a full range of everything from a new ATF "Ruling" to copies of the new Bills passed in Albany that are related to this lawsuit.
43. I am a community resource and I take seriously that people in my community rely upon me for accurate information on permissions and restrictions as gun owners and hunters.
44. I am proud to count as among my customers various members of county and local law enforcement and many Veterans.

**The Immediate Impact of the New Laws:**  
**Opposition to the NYS Police Dictating "Training" Requirements**

45. I have not heard of anyone in this area offering the new course. The NYS Police themselves may have certified instructors to teach handgun live fire training. I am unaware whether they have any curriculum or will, themselves, offer any of the live-fire training. The Jefferson County Sheriff's Office had a list of certified instructors that taught

the handgun safety course. If there's a shortage of instructors, the State should look to retired Army and Marine sergeants. In the Army, we call it "POI Program of Instruction and Lesson Plans."

46. I'm not qualified to teach live-fire because I have no civilian certification to teach any operator level weapons course or live fire training. .
47. I do not have a certification in operator level live-fire weapons. My career as a military warrant officer and a civilian has been in weapons maintenance, maintenance management, logistics, and weapons maintenance instruction. My weapons training and certification comes from the Army Ordnance Center and School, APG, Maryland on post or at Vilseck, Germany.
48. Only certified instructors should teach live fire weapons courses. These folks are typically certified by the NRA or other organization.
49. There's a huge difference between being technically qualified and having extensive experience versus being certified to teach something.
50. The "Memo" issued by the NYS Police (dated August 23, 2022)<sup>13</sup> could not be called a "curriculum" or even an "instruction" on how-to teach live-fire training for two hours and then live-fire test. This "memo" is attached as an Exhibit.
  - a. It does not lay out the steps of selecting the proper handgun for the individual in a 1:1 ratio;

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<sup>13</sup> NYS Division of Criminal Justice Services/State Police, "Minimum Standards for New York State Concealed Carry Firearm Safety Training" (Issued August 23, 2022) at <https://troopers.ny.gov/system/files/documents/2022/08/final-nysp-dcjs-minimum-standards-for-firearm-safety-training-8-23-22.pdf>.

- b. does not require instructor proficiency in a specified range of manufacturer and model handguns;
  - c. does not require 1:1 training on each type of handgun that might be selected by the individual student (given that this is civilian and not a standard-issue military setting);
  - d. does not require training on how to handle equipment failures such as a jammed magazine or round;
  - e. does not require disassembly and cleaning training; and,
  - f. does not require safe storage options to fit individual circumstances such as different types of vehicles.
51. The NYS Police “Memo” does not reflect any time or expertise in the drafting. It would never fly as a training guidance document for the officers of the NYS Police, themselves. It adds nothing to civilian safety training for whatever handgun a customer might choose that will then be stored in whatever vehicle and dwelling a person may use or inhabit.
52. The new laws have already impacted my bottom line. Sales are down, across the board, in firearms and ammunition. I am a small shop. Admittedly, that means my numbers are small. But it does have a direct impact for my wife and I.

**The Impact of the New Laws:**  
**Administrative Overburden and Public Fear**

53. Generally speaking, the new laws are administratively over-bearing for all gun shops, whether small or large.
54. An example of this is the new NYS requirement that dealers write down the name, address, age, and occupation of every customer purchasing ammunition. The NYS Police haven’t issued any kind of a form for this, so I just write it down on a piece of paper. For the first

few weeks, a larger shop in the area (in North Country, this can mean within an hour's drive) was not collecting any ammunition sales information. Customers were complaining against me collecting their information. Eventually, the larger shop did start collecting it, so my point is made, but it's exhausting and frustrating to me and to my customers.

55. The collection of the ammunition sales information from the customer is the smallest of the new mandates.
- a. Training for me in federal and state laws, including straw purchases – not even released, so who knows what that will entail?
  - b. Security cameras inside and outside at every point of entry and exit of my premises – that's every door and window of my house, which totals 20 points, or, 40 cameras?
  - c. Video surveillance 24/7 on two separate hard drives for at least two years? I can tell you there's nothing on the commercial market that meets those needs. Most banks only have storage for 30 days. Even the DOD doesn't have this for its armament storage facilities, even in-country.
  - d. Alarm system required to be installed and monitored by a paid-for third-party company? I don't have the revenue to incur a substantial fee or, this late in my career, to make such a major capital investment.
  - e. It is physically impossible to add safes into my approximately 258 ft. sq. inventory area. I would have to build a building separate of my house, which is financially and logistically unrealistic.
56. Being a one-man shop, I have been very flexible to changes in the laws and the economy, but I've run out of options with these new mandates, i.e., the new video surveillance system and alarm system.

57. I was able to comply with everything in the past. This is a show stopper.
58. It will probably be true – as appears to be the case with the “SAFE Act” provisions – that the NYS Police won’t want to bust a gun shop for not having the alarm system or video surveillance system but will use it as added-on charges. But, is that a way to live or work? I’m not out to break the law or play the odds that I won’t get caught. I am a law-abiding citizen and business owner and Federal Firearms Licensee. For me, it’s either comply or I will have to close.
59. The other reality is that even if we get the TRO to a level where I can stay open, I hope it won’t prove futile. Since September 1, 2022, when the semi-auto rifle law went into effect, sales have plummeted. In the first ten days, I made only \$33 in profit. Even if one person never gets arrested, as long as the threat of a felony charge exists, people are frozen in their tracks and appear ready to do anything to avoid being charged. New Yorkers are caught in the cross-hairs and they know it.
60. I have no long guns currently in stock at this point. I will not be bringing any new long guns into inventory until and unless the licensing requirements are struck down by the courts or repealed. I don’t want to go out of business. I’d like to be restocking and trying to ride through the storm. But, I can’t afford the scenario of having firearms trapped in inventory, if there’s no judicial relief.

### **The Out-of-Business Scenario**

61. If I am forced by the Defendants to go out of business, I will be left with unsold inventory and will suffer a gap in my income that would affect both myself and my wife with basics right down to the cost of home heating oil.

62. I have heard the Governor repeatedly urge people who don't like her position to "just leave" and to "move."
63. As an FFL, that's a non-starter. An FFL can only sell across a state line to another FFL and we must exchange a special copy of our federal licenses that becomes part of each other's records. This is identical to the requirement that a person can only purchase from an FFL in their state of residence, unless that out-of-state FFL ships the firearm back to the residential state FFL, which local FFL then conducts the background check and serves as the point-of-purchase.<sup>14</sup> I do not have any relationship with an out-of-state FFL through which to transfer my inventory. The gist is: if I'm closed down, I'm stuck with inventory I cannot sell.
64. Second, whether an in-state or out-of-state FFL, there's no incentive for another FFL to purchase my inventory unless steeply discounted. FFLs establish individual relationships with manufacturers or wholesale suppliers and negotiate their pricing and inventory.
65. Finally, forcing my wife and I to move out of state is also unrealistic. We are from here. Our family is here. We're established in our home and our community, etc. It's not something we should even have to be considering.

**End of the Line Impact for FFLs and County-Level Officials, Alike.**

66. The Defendants jammed these laws through knowing none of us could comply.

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<sup>14</sup> 18 U.S.C. §923(g)(6) and 27 CFR §478.39(a).

67. The new laws are much worse than the “SAFE Act.” For nine years, I have been able to work within the confines of the ATF mandates and the “SAFE Act.” I could stay in the middle of that and do everything in accordance with the law. I am operating legally.
68. Now, I can’t comply. It’s literally impossible. It’s also unconstitutional.
69. The NYS Police, the NYS DCJS, and the NYS Attorney General – I have received no guidance whatsoever directly from any of these offices that operate under the direction and control of the Governor. My current address and contact information are on file with them as part of the licensing process.
70. In September, I called the Jefferson County Sheriff’s Office to ask if they had guidance documents on the new laws. They said no. As far as I know from them as of last week, if someone has a pistol permit, a semi-automatic rifle can be added to it for \$3.00.
71. In September, I was told by staff at the Jefferson County pistol permit office that they are going to conduct “business as usual” until they get further guidance from the State.
72. As of September 4, 2022, customers walk in to buy an AR-15 and I ask them for their new “semi-automatic rifle license.” They say, “What permit?” And I have to bear the brunt of the anger and frustration of the customer because (a.) they didn’t know it was required; and, (b.) they really can’t understand it in light of the *NYSRPA v. Bruen* Decision from the U.S. Supreme Court, including that there’s no historical antecedent for requiring a rifle license; and, (c.) there’s nowhere they can go to get a stand-alone SAR license.
73. One area gun shop already went out of business, announcing on their Facebook page that they were doing so because of the new laws that took effect on September 1, 2022. Armageddon Arsenal Supply (Evans Mills, NY) wrote on August 27, 2022 on their

Facebook page, “Unfortunately, due to the governor’s new legislation we have made the decision to close the Evans Mills store effective Wednesday, August 21.”

74. Even the Jefferson County Legislature passed a “Resolution” in opposition to the so-called “Concealed Carry Improvements Act.”<sup>15</sup> It’s attached as an Exhibit.
75. **A Final Word on Safety**. Since 2013, I have sold about a thousand customers a firearm and I am not aware that any of them have committed a crime. Customers buy the parts to build a rifle, they come back, they ask, “Did I do it right?” And I make the corrections. It’s a healthy hobby for mostly young men in their 20s and 30s and 40s. They build .223, .556, AR-10, the .308 caliber, and they use it for all kinds of wildlife hunting, from coyote to deer to bear. Hunters do also take their ARs on out-of-state hunting trips to harvest wild hog.
76. When I shut down for full retirement, I’d like to do it on my own terms, not because of some mandates I can’t meet that make no sense.
77. For my twenty years in the Army, I was the guy who fixed everything for the guys out front, engaged in live fire with foreign terrorists. Without me, they had no bullets going down range. I was part of the security of this nation. Now, I’m part of people’s security in their homes and communities and I’m part of putting meat on the table to feed their families.

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<sup>15</sup> See, WWNY-TV, “Jefferson County lawmakers protest state’s gun law with resolution” (October 5, 2022) at <https://www.msn.com/en-us/news/politics/jefferson-county-lawmakers-protest-states-gun-law-with-resolution/ar-AA12CyBA>.



78. You want a guy like me to stay in business and to be working with the ATF and the FBI to protect the Constitution and our Second Amendment, at the same time as keeping our communities safe and our families fed.

Dated: November 6, 2022

Robert Owens

Robert Owens, individually  
and as Sole Proprietor of "Thousand Islands Armory,"  
an FFL-01, Dealer in Firearms